

EchoStar's spectrum efficiency, and enhance the system's capacity to provide local broadcast signals under the broadcast signal carriage provisions of the Satellite Home Viewer Improvement Act of 1999 (SHVIA) and the Commission's rules implementing SHVIA.³ These provisions (otherwise known as "local-into-local" service) require satellite carriers to carry upon request all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license.⁴ For carriage to commence by January 1, 2002, broadcast stations were required to notify a satellite carrier by July 1, 2001 of their mandatory carriage election.⁵

3. EchoStar's application was placed on public notice on April 5, 2002.⁶ Although no pleadings were timely filed in response to this public notice, North Pacific International Television, Inc. (NPIT) and SES Americom, Inc. (SES Americom) filed, respectively, a "Petition for Imposition of Condition" and an *ex parte* letter after the deadline for filing replies,⁷ to which EchoStar responded.⁸ NPIT and SES Americom subsequently filed replies.⁹ In the interest of a full and complete record in this proceeding, we will consider these late-filed pleadings. EchoStar also has filed a request for STA to conduct in-orbit testing of the EchoStar VIII satellite at the 129° W.L. orbit location for a period of eight weeks.¹⁰ No pleadings were filed in response to the public notice of EchoStar's STA Request.¹¹

III. DISCUSSION

4. NPIT, the licensee of station KHCV(TV), Seattle, Washington, requests that the Commission condition the grant of EchoStar's application on EchoStar devoting the new capacity provided by EchoStar VIII to fulfill SHVIA obligations.¹² As we stated when authorizing the launch and operation of EchoStar VII, however, SHVIA does not require DBS operators to use any (let alone all) of a satellite's

³ EchoStar Application at 6-7 (citing the Satellite Home Viewer Improvement Act of 1999, Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (November 29, 1999) (SHVIA), *codified at* 47 U.S.C. § 338, and *Implementation of the Satellite Home Viewer Improvement Act of 1999*, CS Docket No. 00-96, Report and Order, FCC 00-417, 16 FCC Rcd 1918 (2000), Order on Reconsideration, FCC 01-249, 16 FCC Rcd 16544 (2001)). The U.S. Court of Appeals for the Fourth Circuit upheld the constitutional validity of SHVIA and the reasonableness of the Commission's rules promulgated thereunder. *See Satellite Broadcasting and Communications Association v. FCC*, 275 F.3d 337 (4th Cir. 2001), *cert. denied*, ___ U.S. ___, 70 U.S.L.W. 3580 (U.S. June 17, 2002) (No. 01-1332).

⁴ 47 U.S.C. § 338; 47 C.F.R. § 76.66(b).

⁵ 47 C.F.R. § 76.66(c)(3).

⁶ *See* Public Notice, Report No. SAT-00107 (rel. April 5, 2002).

⁷ Petition for Imposition of Conditions of North Pacific International Television, Inc., File No. SAT-LOA-20020329-00042 (May 13, 2002) (NPIT Petition); Letter from Phillip L. Spector, Attorney for SES Americom, Inc., to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOA-20020329-00042 (May 21, 2002) (SES Americom *Ex Parte* Letter).

⁸ Motion to Strike and Opposition of EchoStar Satellite Corporation, File No. SAT-LOA-20020329-00042 (May 22, 2002) (EchoStar Opposition to NPIT); Motion to Strike and Opposition of EchoStar Satellite Corporation, File No. SAT-LOA-20020329-00042 (May 28, 2002) (EchoStar Opposition to SES Americom).

⁹ Reply of North Pacific International Television, Inc., File No. SAT-LOA-20020329-00042 (May 28, 2002) (NPIT Reply); Opposition to Motion to Strike and Reply to Opposition of SES Americom, Inc., File No. SAT-LOA-20020329-00042 (June 3, 2002) (SES Americom Reply).

¹⁰ Request of EchoStar Satellite Corporation for Special Temporary Authority to Test a Direct Broadcast Satellite at the 129° W.L. Orbital Location, File No. SAT-STA-200200416-00073 (April 16, 2002) (EchoStar STA Request).

¹¹ *See* Public Notice, Report No. SAT-00110 (rel. May 17, 2002).

¹² *See* NPIT Petition at 2.

capacity for local-into-local service.¹³ NPIT further asks the Commission to use the launch of the new satellite, which will significantly increase the number of transponders available for EchoStar to provide local-into-local service, as a reason to give all broadcasters who were denied carriage during the statutory filing window that ended July 1, 2001, an opportunity to perfect their carriage requests.¹⁴ NPIT essentially is requesting a substantive change to the Commission's recently adopted SHVIA rules and procedures. The licensing proceeding before us is not the appropriate vehicle to address NPIT's concerns.¹⁵ For these reasons, we deny NPIT's request.

5. In considering EchoStar's application, we must evaluate the proposed satellite's interference potential to other DBS permittees and to the radiocommunications systems of other countries. In particular, we must determine whether the EchoStar VIII satellite will be operated in accordance with Appendices 30 and 30A of the International Telecommunication Union (ITU) Radio Regulations. Because the technical parameters of EchoStar's DBS system vary from those set forth for U.S. assignments in the Region 2 broadcasting satellite service (BSS) plans and its associated Feeder Link Plan,¹⁶ the Commission must request modification of the Region 2 BSS Plan and its associated Feeder Link Plan for the EchoStar VIII satellite.¹⁷ Annex 1 of Appendices 30 and 30A provide the methodology and criteria for determining whether a proposed satellite system (*i.e.*, a proposed modification to the Plan) might interfere with frequency assignments in accordance with the Region 2 BSS Plan and its associated Feeder Link Plan, other satellite systems, or terrestrial services.¹⁸ If the limits in Annex 1 are exceeded, the system must be coordinated with the affected systems or services.

6. Upon reviewing EchoStar's application, we find sufficient evidence to determine that EchoStar VIII will not cause unacceptable interference to other U.S. DBS systems. Although EchoStar notes that certain EchoStar and DirecTV, Inc. (DirecTV) networks would be affected by EchoStar VIII's operations, EchoStar states that it will ensure compatibility between its own operational satellites, and will coordinate with DirecTV as necessary to ensure compatibility of EchoStar VIII operations with the operations of DirecTV satellites.¹⁹

7. EchoStar also has submitted analyses demonstrating EchoStar VIII's interference potential to radiocommunications systems of other countries.²⁰ In that regard, SES Americom is concerned that EchoStar did not include in its analyses the United Kingdom-filed modification to the Region 2 BSS Plan

¹³ See *EchoStar Satellite Corporation*, Order and Authorization, DA 02-118, 17 FCC Rcd 894, 896 ¶ 5 (Sat. & Radiocomm. Div. 2002).

¹⁴ See NPIT Petition at 3-4; NPIT Reply at 2-3. The Cable Services Bureau (now part of the newly established Media Bureau) recently denied a complaint for mandatory carriage brought by NPIT against EchoStar, finding that NPIT failed to properly notify EchoStar of its mandatory carriage election by July 1, 2001 under the Commission's rules and procedures. See *North Pacific International Television, Inc. v. EchoStar Satellite Corporation*, Memorandum Opinion and Order, DA 02-129, 17 FCC Rcd 919 (Cable Serv. Bur. 2002), *recon. pending*.

¹⁵ Accord EchoStar Opposition to NPIT at 6 & n.20.

¹⁶ The International Telecommunication Union (ITU) Radio Regulations divide the world into three Regions. Generally, Region 1 includes Africa, Europe, Northern and Western portions of Asia; Region 2 includes the Americas and Greenland; and Region 3 includes Southern portions of Asia, Australia and the South Pacific. See ITU Radio Regulations Article S5, Section I. Unless referring specifically to the Region 2 BSS Plan and its associated Feeder Link Plan, in the United States the term "DBS" is used interchangeably with "BSS."

¹⁷ Some of these varying parameters include type of emission, size of receive dish antennas and the use of spot beams.

¹⁸ See ITU Radio Regulations, Appendices 30 and 30A.

¹⁹ Revised Technical Annex, Appendix 3 at 1-2.

²⁰ See *id.* at Appendices 3 and 4.

associated with SES Americom's recent proposal to provide DBS service in the United States.²¹ Modifications of the BSS Plans, such as the one submitted by the United Kingdom, are expected not only to continue, but also to increase in the future. Therefore, we remind EchoStar that its satellite operations are not guaranteed protection from interference from systems licensed by other Administrations operating in accordance with the ITU Radio Regulations unless and until the Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of EchoStar VIII. Further, we condition operation of EchoStar VIII such that, until the Region 2 BSS Plan and its associated Feeder Link Plan are modified to include EchoStar VIII's parameters, it shall not cause greater interference than that which would occur from the current USA Plan assignments at 110° W.L. to other BSS or feeder link assignments, or other services or satellite systems, operating in accordance with the ITU Radio Regulations.²² To the extent that SES Americom believes that these conditions do not address its specific concerns,²³ we disagree. These conditions require EchoStar to coordinate with any Administration having an affected Region 2 Plan assignment or prior-filed Plan modification, unless and until the Region 2 BSS Plan and its associated Feeder Link Plan are modified to include EchoStar VIII's parameters. EchoStar will be expected to provide continuing documentation, as necessary, for either the coordination or agreement-seeking process.²⁴ Similarly, EchoStar may be required to assist the Commission in future cases in which it must coordinate with or grant agreement to the Administrations of later implemented systems regarding EchoStar's network.

8. Finally, we grant EchoStar's request for STA to conduct in-orbit testing of the EchoStar VIII satellite at the 129° W.L. orbit location. Grant of the STA will allow EchoStar to complete in-orbit testing without disrupting ongoing service at the 110° W.L. orbit location.²⁵ The Commission typically allows licensees to conduct in-orbit testing at orbit locations different from those authorized, subject to coordination with affected adjacent satellite operators. EchoStar states that grant of the requested STA presents no risk of interference to other authorized users.²⁶ According to EchoStar, the 129° W.L. orbit location is allotted to Canada under the Region 2 BSS Plan, but is currently unused.²⁷ We understand that EchoStar's requested temporary in-orbit testing at 129° W.L. is acceptable to the Canadian regulatory authorities. In addition, EchoStar states there are no operational DBS satellites at or adjacent to 129° W.L. with which to coordinate.²⁸ Grant of the STA is conditioned on EchoStar VIII not causing harmful interference to any lawfully operating in-orbit satellites, and EchoStar shall cease testing operations immediately upon notification of such interference. EchoStar must inform the Commission upon the completion of the in-orbit testing.

²¹ See SES Americom *Ex Parte* Letter at 3. See also Public Notice, Report No. SAT-00110 (rel. May 17, 2002) (seeking comment on SES Americom's petition for declaratory ruling to provide DBS service in the United States from a satellite licensed by the Government of Gibraltar at 105.5° W.L.). The United Kingdom is pursuing ITU coordination of this satellite on behalf of Gibraltar. See SES Americom *Ex Parte* Letter at 2.

²² EchoStar agrees to the imposition of these conditions. See EchoStar Opposition to SES Americom at 11.

²³ See SES Americom Reply at 16.

²⁴ This includes, but is not limited to, the submission of any information or analyses necessary for completing the Plan modification process.

²⁵ There are two operational DBS satellites currently operating at 110° W.L., the EchoStar V satellite using 29 of 32 channels, see *supra* footnote 1, and a DirecTV satellite using the other three channels.

²⁶ EchoStar STA Request at 4.

²⁷ *Id.* at 1.

²⁸ *Id.* at 4.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that the Application of EchoStar Satellite Corporation for Minor Modification of DBS Authorization, Launch and Operating Authority for EchoStar VIII, File Nos. SAT-MOD-20020329-00041, SAT-LOA-20020329-00042 & SAT-AMD-20020430-00086, IS GRANTED, and EchoStar Satellite Corporation IS AUTHORIZED to launch and operate its satellite, EchoStar VIII, using channels 1-27, 29 and 31 at the 110° W.L. orbit location in accordance with the terms, representations, and technical specifications set forth in its application.

10. IT IS FURTHER ORDERED that EchoStar Satellite Corporation's request for Special Temporary Authority, File No. SAT-STA-200200416-00073, to conduct in-orbit testing of the EchoStar VIII satellite at the 129° W.L. orbit location, is GRANTED for a period of eight weeks from the launch of the EchoStar VIII satellite. EchoStar's testing of the EchoStar VIII satellite at the 129° W.L. orbit location must also comply with the conditions set forth in this *Order* for operation of the EchoStar VIII satellite at the 110° W.L. orbit location. In-orbit testing of EchoStar VIII shall not cause harmful interference to any lawfully operating in-orbit satellites and EchoStar shall cease operations immediately upon notification of such interference during this period of testing.

11. IT IS FURTHER ORDERED that the Petition for Imposition of Condition filed by North Pacific International Television, Inc. on May 13, 2002, is DENIED.

12. IT IS FURTHER ORDERED that the authorization granted in this *Order* is subject to the following conditions: (1) until the International Telecommunication Union (ITU) Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of EchoStar VIII and its associated feeder links, this satellite system shall not cause greater interference than that which would occur from the current U.S. assignments in the Region 2 BSS Plan at 110° W.L. to other BSS or feeder link assignments, or other services or satellite systems operating in accordance with the ITU Radio Regulations; and (2) no protection from interference caused by radio stations authorized by other Administrations is guaranteed to EchoStar VIII unless and until Appendices 30 and 30A plan modification procedures are successfully and timely completed.

13. IT IS FURTHER ORDERED that EchoStar Satellite Corporation shall coordinate all transfer orbit Telemetry, Tracking, and Control operations with other potentially affected in-orbit DBS or Fixed-Satellite Service operators.

14. IT IS FURTHER ORDERED that EchoStar Satellite Corporation has 30 days from the date of the release of this *Order and Authorization* to decline this authorization as conditioned. Failure to respond within that period will constitute formal acceptance of the authorization as conditioned.

15. This *Order and Authorization* is issued pursuant to Section 0.261 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

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